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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 21, 1998

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Stop Code - 1170
Washington, D.C. 20554

Re: Petition for Rule Making

Dear Ms. Salas:

Transmitted herewith on behalf of Educational Information Corporation, licensee of non-commercial educational Radio Station WCPE-FM, Raleigh, North Carolina, is an original and nine (9) copies of a Petition for Rule Making.

If any questions should arise during the course of your consideration of this matter, it is respectfully requested that you communicate with this office.

Very truly yours,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

David Kushner

David Kushner
Counsel to Educational Information Corporation

DK:rb

No. of Copies rec'd 0+9
List A B C D E

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)
	)
Grandfathered "Short-Spaced"	)
Non-Commercial Educational	)
FM Broadcast Stations	)

To: The Commission

Petition for Rule Making

Pursuant to 47 C.F.R. § 1.401, Educational Information Corporation ("EIC"), licensee of non-commercial educational broadcast station WCPE-FM, Raleigh, North Carolina, by its attorneys, hereby submits this Petition for Rule Making ("Petition"). The Petition advocates the adoption of a new rule that would eliminate unnecessary regulations, streamline the current method of modifying grandfathered "short-spaced" non-commercial educational ("NCE") FM stations,[1] and bring the standards for commercial and NCE FM stations into parity. By the proposed new rule, the text of which is attached as Appendix A, EIC asks the Commission to lift restrictions that unnecessarily impede flexibility as to height above average terrain and operating power for grandfathered NCE-FM stations and, for the minor number of such grandfathered stations, to delete the current second-adjacent and third-adjacent overlap standard that has proven ineffective, as has already been done for grandfathered commercial FM stations.[2]

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[1] While 47 C.F.R. § 73.509 does not set forth required spacings for co-channel and adjacent channel NCE stations, but instead prohibits the overlap of certain pairs of signal strength contours, such overlap is commonly referred to as "short-spacing." *See* Report and Order, *Grandfathered Short-Spaced FM Stations*, FCC 97-276, 8 Comm. Reg. (P & F) 1238, 1243 n.13 (1997) (hereinafter "Report and Order").

[2] *See id.*

Background

Recently, the Commission has modified its procedures and adopted related rule revisions that provide certain commercial grandfathered FM broadcast stations enhanced flexibility in making transmitter site changes and other facility modifications, while simultaneously preserving or improving the overall technical integrity of the FM band. In particular, then-existing restrictions on extending the 1 mV/m contour for grandfathered short-spaced commercial stations in 47 C.F.R. § 73.213(a) were replaced with interference showings based on the desired-to-undesired signal strength ratio ("D/U ratio") method for grandfathered co-channel and first-adjacent channel short-spaced stations,[3] and then-existing second- and third-adjacent channel spacing requirements for grandfathered short-spaced stations were eliminated altogether.[4]

Because the Joint Petition for Rule Making and the *Notice of Proposed Rule Making*[5] in *Grandfathered Short-Spaced FM Stations* focussed exclusively on certain commercial grandfathered short-spaced stations, the Commission declined to consider the applicability of its procedural and rule changes to NCE-FM stations.[6]

Statement of Interest

EIC is the licensee of non-commercial educational broadcast station WCPE-FM, Raleigh, North Carolina. WCPE is short-spaced with WXYC-FM, Chapel Hill, North Carolina. Both WCPE

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[3] *See id.* at 1240-43.

[4] *See id.* at 1243-45.

[5] Notice of Proposed Rule Making, *Grandfathered Short-Spaced FM Stations*, FCC 96-236, 8 Comm. Reg. (P & F) 2119 (1996) (hereinafter "NPRM").

[6] Report and Order, 8 Comm. Reg. at 1243.

and WXYC were authorized prior to July 1, 1991, and would therefore be considered grandfathered stations under the proposed rule. WXYC operates on a second-adjacent channel that is located within the 1 mV/m contours of WCPE. As the Commission's rules now stand, to modify WCPE's operating parameters, EIC must obtain a waiver because it would otherwise be prohibited from extending WCPE's 10 mV/m contour over WXYC's 1 mV/m contour. If the proposed rule were adopted, which would permit all second-adjacent and third-adjacent channel grandfathered NCE-FM stations some limited flexibility to increase operating facilities or to relocate to other short-spaced sites, EIC would no longer be required to obtain the waiver but could, instead, increase its operating facilities as any commercial FM station can do already.

Although EIC would thus benefit in this minor way, EIC is keenly interested in the greater general benefits to the public that would follow from treating grandfathered short-spaced commercial and NCE FM stations the same and in allowing the Commission and the broadcast industry to adopt a more flexible approach to modifying grandfathered short-spaced FM stations.

Argument

The Commission has allowed those commercial grandfathered FM stations that are currently short-spaced to second-adjacent and third-adjacent channel commercial FM stations to increase station parameters to the maximum permitted by 47 C.F.R. § 73.211 without regard to short-spacing whatsoever. There is no reason to treat grandfathered second- and third-adjacent channel NCE-FM stations any differently.

Just as many commercial grandfathered stations currently cause and receive interference from other commercial grandfathered stations,[7] the same is true for NCE stations. The ready availability

[7] *See* NPRM, 8 Comm. Reg. at 2120.

of computer-supported analysis does not discriminate in allowing both the Commission and the broadcast industry to adopt the same more accurate and flexible approach for NCE stations that has already been implemented for commercial stations.[8]

For more than thirty years the Commission has repeatedly recognized, in both the commercial and NCE contexts, that second- and third-adjacent channel interference can only occur in a small area around the transmitter site of the station.[9] In fact, any interference actually results in a substitution of service in that limited area, not in a complete loss of service, and the potential for such interference greatly depends on the quality of the receivers in the affected area. EIC maintains that the record has not shown that second- and third-adjacent channel short-spaced NCE-FM situations are particularly troublesome. In addition, the usually small amounts of additional interference that may result will often fall in less densely populated rural areas.

The Commission decided to allow commercial grandfathered short-spaced FM stations second- and third-adjacent channel signal contour overlap in all existing circumstances because the benefit of increased service outweighed the potential for interference in very small areas.[10] Similarly, the risk of creating very small pockets of potential interference to some older receivers is abundantly outweighed by augmenting the ability of existing NCE-FM stations to modify and improve service in response to changing market conditions. Although the second- and third-adjacent channel contour protection criteria contained in current 47 C.F.R. § 73.509 are somewhat different

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[8] *Cf. id.* at 2121.

[9] *See* Fourth Report and Order, *Revision of FM Broadcast Rules*, FCC 64-919, 3 Rad. Reg. 2d (P & F) 1571 (1964); *Educational Information Corporation*, 6 FCC Rcd 2207 (1991); *Grandfathered Short-Spaced FM Stations*, 8 Comm. Reg. at 1245.

[10] *See* Report and Order, 8 Comm. Reg. at 1245; *see also* NPRM, 8 Comm. Reg. at 2122.

than the distance spacing and contour protection requirements for commercial FM stations, parity between NCE-FM stations and the new relaxation for commercial FM stations is practically mandated by the laws of physics, which are impartial to an FM station's commercial or non-commercial status.[11]

Under the current rules, many grandfathered NCE-FM stations do not even have the flexibility to maintain their existing coverage areas if circumstances require them to make a change. The Commission itself has recognized that

> Lack of flexibility to move or make changes is particularly a problem for those grandfathered stations located inside the service contour of a second-adjacent-channel or third-adjacent-channel station. In such situations, the stations have no ability to file applications pursuant to the contour protection provisions . . . and they can only decrease their coverage under the current [rules].[12]

Under the recent rule revisions, however, commercial grandfathered stations are permitted great flexibility by not being constrained by second-adjacent and third-adjacent channel considerations. Lack of flexibility to move or make changes is particularly a problem for grandfathered NCE-FM stations located near the service contour of a second-adjacent or third-adjacent channel NCE-FM station. The Mass Media Bureau's characterization of a Commission policy preference in a similar context is fully applicable here: "[E]asing the barrier against second and third adjacent channel

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[11] In fact, 47 C.F.R. §§ 73.509 and 73.215 are technically equivalent in all but the second-adjacent contour overlap. The superficial differences between the commercial and NCE rules are a result of historical accident and the different allotment systems. However, just as the Commission relaxed the rules for commercial grandfathered stations without relaxing the second- and third-adjacent spacing requirements as allotment and assignment criteria, *see* Report and Order, 8 Comm. Reg. at 1245, the proposed rule here similarly does not the relax or otherwise alter the requirements pertaining to allotment. The Commission can retain the two different allotment systems, with their correspondingly different technical rules to implement their respective allocation systems, while still bringing technical parity to rules not implicated in the allotment regimes.

[12] NPRM, 8 Comm. Reg. at 2122.

overlap in the reserved band would increase the flexibility available to NCE-FM station[s] to make significant improvements in service."[13] There is no logical, scientific, or technical reason to deny such "significant improvements in service" to grandfathered NCE-FM stations.

As the Commission noted in the context of the commercial FM stations rules, a limited number of grandfathered short-spaced stations existed between 1964 and 1987 with complete flexibility on second-adjacent and third-adjacent channel short-spacings, and, by the Commission's own account, the Commission did not receive any interference complaints resulting from facilities modifications during that time.[14] Significantly, the absence of restrictions did not result in interference complaints, even with radio designs decades of years old.

EIC maintains that it is in the public interest to allow the very narrowly defined category of grandfathered "short-spaced" NCE-FM stations to modify their facilities without regard to grandfathered second-adjacent and third-adjacent channel stations. In addition to the need for flexibility in site selection and the limited risk of actual interference, other factors support this change.

First, as in the case of commercial grandfathered stations, there is a limited universe of eligible grandfathered NCE-FM stations.[15]

Second, EIC's own experience in working with the current rule, combined with the ready availability of computers and more sophisticated software, suggests that this is an appropriate time to propose changes in the rules for grandfathered "short-spaced" NCE-FM stations. The proposed

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[13] *Educational Information Corporation Authorized to Modify Facilities of WCPE(FM), Raleigh, NC*, Report No. MM-532 (Mass Media Bureau, Apr. 11, 1991).

[14] *See* Report and Order, 8 Comm. Reg. at 1245; NPRM, 8 Comm. Reg. at 2122.

[15] *See* Report and Order, 8 Comm. Reg. at 1244.

changes properly put the focus on more accurately evaluating and controlling interference. For NCE-FM stations with second-adjacent and third-adjacent channel grandfathered short-spacings, the proposed deletion of the outdated interference restrictions would return some flexibility to NCE-FM stations when proposing modifications.

Finally, because the laws of physics do not discriminate between commercial and NCE stations, there is no physical reason that the two categories of stations should be treated any differently. The proposed rule, while preserving or improving the integrity of the FM band, will therefore bring desirable scientific and logical equivalence to the Commission's rules as well as streamline and greatly reduce the current, unnecessary regulatory burden facing certain NCE-FM stations, stations that are often the least able to afford such burdens.

The Commission's recognition, in another context, of the desirability of technical parity is aptly applied here:

> [T]here is no technical justification for the disparate treatment of these similar situations. . . . We believe it is good public policy for our technical allotment and assignment requirements to be based upon reasonably derived and consistently applied technical standards.
>
> [. . .]
>
> [L]icensees of certain classes of FM stations should not be unnecessarily constrained by an inconsistent technical standard, while others, operating under a less restrictive standard, do not appear to have experienced any significant problems over the years.[16]

Sound physics and public policy therefore counsel the adoption of the proposed rule.

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[16] Third Report and Order, *Review of Technical Parameters for FM Allocation Rules*, FCC 89-62, 66 Rad. Reg. 2d (P & F) 116, 120-21 (1989).

Conclusion

For the foregoing reasons, EIC respectfully requests that the Commission issue a Notice of Proposed Rule Making to consider the proposed rule. This rule will provide much needed flexibility for grandfathered "short-spaced" non-commercial educational FM stations to change transmitter facilities or operating parameters, thereby permitting them to respond to changing circumstances, to reach their listening audience more efficiently and effectively while controlling interference, and to serve the public interest.

Respectfully submitted,

EDUCATIONAL INFORMATION CORPORATION

By _____
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Its Attorneys

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May 21, 1998

Appendix A

Text of Proposed Rule

Non-commercial educational stations at locations authorized prior to July 1, 1991, that did not meet the separation distances required by § 73.507 and have remained continuously short-spaced since that time may be modified or relocated with respect to such short-spaced stations, provided that no area previously receiving interference-free service would receive co-channel or first-adjacent channel interference as predicted in accordance with provisions of this section, or that a showing is provided pursuant to provisions of this section that demonstrates that the public interest would be served by the proposed changes.

(a) The F(50,50) curves in Figure 1 of § 73.333 are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to § 73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the desired (service) field strength. The F(50,10) curves in Figure 1a of § 73.333 are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to § 73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the undesired (interfering) field strength. Predicted interference is defined to exist only for locations where the desired (service) field strength exceeds 0.5 mV/m (54 dBu) for a Class B station, 0.7 mV/m (57 dBu) for a Class B1 station, and 1 mV/m (60 dBu) for any other class of station.

(1) Co-channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 20 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 40 dBu or more for predicted interference to exist).

(2) First-adjacent channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 6 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 54 dBu or more for predicted interference to exist).

(b) For co-channel and first-adjacent channel stations, a showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent channel interference, caused and received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the population subject to co-channel or first-adjacent channel interference caused by the proposed facility to each short-spaced station individually is not increased.

(1) The applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent channel interference has adequate aural service remaining. For the purpose of this section, adequate service is defined as five or more aural services (AM or FM).

(2) If the applicant so chooses, computer predictions based upon actual topographic features and the Langley-Rice method of field strength prediction may be used in lieu of the F(50,50) and F(50,10) curves if the licensee(s) of the affected short-spaced station(s) agree(s) in writing to accept the Langley-Rice field strength predictions in lieu of the F(50,50) and F(50,10) curves with respect to the applicant's station.

(c) For co-channel and first-adjacent channel stations, a copy of any application proposing interference caused in any areas where interference is not currently caused must be served upon the licensee(s) of the affected short-spaced station(s).

(d) For stations covered by this section, there are no distance separation or interference protection requirements with respect to second-adjacent and third-adjacent channel short-spacings that have existed continuously since July 1, 1991.